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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,097	03/09/2005	Hans Smola	112701-598	3805
29157 7590 02/05/2008 BELL, BOYD & LLOYD LLP P.O. Box 1135 CHICAGO, IL 60690			EXAMINER ROGERS, JUNE MARIE	
			ART UNIT 4173	PAPER NUMBER
			NOTIFICATION DATE 02/05/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10527097	3/9/2005	SMOLA ET AL.	112701-598

BELL, BOYD & LLOYD LLP  
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**EXAMINER**

JUNE ROGERS

ART UNIT	PAPER
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4173

20080130

**DATE MAILED:**

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**Commissioner for Patents**

Rober M. Barrett  
Bell, Boyd & Lloyd

The reply filed on December 03, 2007 in response the restriction and species election mailed on October 22, 2007 is non-responsive because it fails to elect (1) the presence or absence of a molecule that stimulates energy metabolism and (2) elect the presence of absence of an antioxidant.

Specifically, if Applicant elected the invention of Group I, II, or III, Applicant was required to elect (1) the presence of absence of a molecule that stimulates energy metabolism and (2) elect the presence of absence of an antioxidant. If Applicant elected the presence of a molecule that stimulates energy metabolism, Applicant was required to define a single specific molecule that stimulates energy metabolism. If Applicant elected the presence of an antioxidant, Applicant was required to elect a single specific species of antioxidant.

Therefore Applicant's election of Group III requires Applicant to comply with the species election as cited above.

Applicant's belief that a species election is not necessary because Group III, claims 10 and 11 do not identify a specific species of a molecule that stimulates energy metabolism and/or an antioxidant is incorrect. According to the MPEP, in application where only generic claims are presented, restriction cannot be required UNLESS the generic claims recite or encompass such a multiplicity of species that an unduly extensive and burdensome search would be necessary to search the entire scope to the claim. See MPEP 803.02> and 809.02(a). Such is the case in Applicant's independent claims 10 and 11.

Applicant is required to comply with the species election as stated above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUNE ROGERS whose telephone number is (571)270-3497. The examiner can normally be reached on M-F 9-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fred Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for

unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Barbara Padio*  
BARBARA P. BADIO, PH.D  
PRIMARY EXAMINER

/JUNE ROGERS/  
Examiner, Art Unit 4173